

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

4 COMMONWEALTH ANNUTY

5 Plaintiff,

6 v.
7 DALESSIO

8 Defendants.
9

10 **FILED**

11 SEP 23 2008

12 RICHARD W. WIEKING
13 CLERK, U.S. DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND

16 No. C 08-1739 CW

17 ORDER PROVIDING
18 NOTICE TO PRO SE
DEFENDANT OF
19 REQUIREMENTS FOR
OPPOSING MOTION
FOR SUMMARY
JUDGMENT

20 Plaintiffs have informed the Court of their intention to file
21 a summary judgment motion in this case. If Plaintiffs choose to
22 file the motion, they must do so by serving Defendant with a notice
23 of the motion and a copy of the motion, indicating the time of the
24 scheduled hearing on the motion. They must do so at least 35 days
25 before the date of the hearing. Defendant's opposition, including
26 any supporting documents, must be filed by 21 days before the date
27 of the hearing. Plaintiff's reply to Defendant's opposition,
28 should they choose to file one, is due 14 days before the hearing.

Rule 56 of Federal Rule of Civil Procedure governs summary
judgment motions. A summary judgment motion is a request for an
order of judgment, without a trial, in favor of the party bringing
the motion, Plaintiffs here. In such a motion, the party moving
for summary judgment presents the facts that are not disputed and
argues that these facts entitle it to judgment as a matter of law.
In other words, Plaintiffs will be arguing that there does not need
to be a trial in the case against it because undisputed facts show

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1 that they are entitled to a judgment in their favor.

2 The relevant parts of Rule 56 are as follows:

3 (c) Motion and Proceedings Thereon. . . . the
4 judgment sought shall be rendered forthwith if the
5 pleadings, depositions, answers to interrogatories, and
6 admissions on file, together with the affidavits, if any,
7 show that there is no genuine issue as to any material
8 fact and that the moving party is entitled to a judgment
9 as a matter of law. A summary judgment, interlocutory in
10 character, may be rendered on the issue of liability alone
11 although there is a genuine issue as to the amount of
12 damages.
13 . . .
14

15 (e) Form of Affidavits; Further Testimony; Defense
16 Required. Supporting and opposing affidavits shall be
17 made on personal knowledge, shall set forth such facts as
18 would be admissible in evidence, and shall show
19 affirmatively that the affiant is competent to testify to
20 the matters stated therein. Sworn or certified copies of
21 all papers or parts thereof referred to in an affidavit
22 shall be attached thereto or served therewith. The court
23 may permit affidavits to be supplemented or opposed by
24 depositions, answers to interrogatories, or further
25 affidavits. When a motion for summary judgment is made
and supported as provided in this rule, an adverse party
may not rest upon the mere allegations or denials of the
adverse party's pleading, but the adverse party's
response, by affidavits or as otherwise provided in this
rule, must set forth specific facts showing that there is
a genuine issue for trial. If the adverse party does not
so respond, summary judgment, if appropriate, shall be
entered against the adverse party.
26 . . .
27

28 (g) Affidavits Made in Bad Faith. Should it appear
to the satisfaction of the court at any time that any of
the affidavits presented pursuant to this rule are
presented in bad faith or solely for the purpose of delay,
the court shall forthwith order the party employing them
to pay to the other party the amount of the reasonable
expenses which the filing of the affidavits caused the
other party to incur, including reasonable attorney's
fees, and any offending party or attorney may be adjudged
guilty of contempt.

Rule 56 (emphasis added).

Although the actual text of Rule 56, cited above, controls in

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1 any dispute as to its interpretation, the Court provides the
2 following brief explanation of Defendant's rights and obligations
3 under the Rule: If Defendant does not file an opposition
4 supported by evidence, the Court may enter summary judgment in
5 favor of Plaintiffs. If Defendant does not contradict the
6 Plaintiffs' evidence with evidence of his or her own, the Court
7 might take Plaintiffs' evidence as true and enter judgment against
8 Defendant. Under Federal Rule of Civil Procedure 56(e), the
9 following types of evidence may be submitted:

- 10 1. Statements made in the complaint if the complaint (a)
11 was signed under penalty of perjury and (b) shows
12 personal knowledge (i.e., "first-hand" or "non-hearsay"
13 knowledge) of the matters stated;
- 14 2. Affidavits or declarations. Any person signing
15 an affidavit or declaration must have personal knowledge
16 of the facts stated. At the end of a declaration or
17 affidavit, the document must state, "I declare under
18 penalty of perjury that the foregoing is true and
19 correct," and be signed by the individual who has the
20 required personal knowledge. Any declarations or
21 affidavits that are unsigned will not be considered.
- 22 3. Copies of documents so long as they are submitted with
23 proof that the records are what they purport to be.
24 Specifically, Defendant must declare under penalty of
25 perjury that the documents are true and correct copies
26 of the documents, and must specify how the documents
27 were obtained; and
- 28 4. Transcripts of depositions, answers to interrogatories,
29 or admissions obtained in this proceeding.

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1 To defeat a summary judgment motion, Defendant must present
2 evidence that, when viewed together with Plaintiffs' evidence,
3 convinces the Court that his or her claims should go to trial.
4

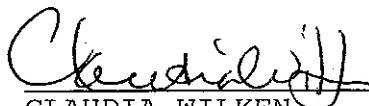
5 If Defendant has a good reason why facts are not available to
6 him or her at the time required to oppose the summary judgment
7 motion, the Court may consider a request to postpone ruling on the
8 motion. To support such a request, Defendant must provide the
9 Court and opposing counsel with an affidavit or declaration
10 (signed under penalty of perjury) setting forth the reasons the
11 facts are unavailable and indicating how those facts would support
12 his or her claims.

13 Defendant is reminded that if he or she does not file and
14 serve a written opposition with supporting documents or a request
15 to postpone with a supporting affidavit or declaration, the Court
16 may deem this failure to act to be consent to the granting of
17 Plaintiffs' summary judgment motion.

18 This notice shall constitute the only such notice from the
19 Court concerning the Plaintiffs' summary judgment motion. The
20 Court will not provide any further information regarding the
21 interpretation of Federal Rule of Civil Procedure 56 and will not
22 answer unsolicited questions about the applicable rules of
23 procedure.

24
25 Dated:

SEP 23 2008


CLAUDIA WILKEN
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

COMMONWEALTH ANNUITY AND LIFE
INSURANCE COMPANY et al,

Case Number: CV08-01739 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

DALESSIO et al,

Defendant.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 26, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Dalessio Family 2003 Trust
John Dalessio
Rita Dalessio
16 Via Las Encinas
Carmel Valley, CA 93924

Dated: September 26, 2008

Richard W. Wiking, Clerk
By: Sheilah Cahill, Deputy Clerk